



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

RECEIVED

SEP 11 2003

Applicants: Takemi Aonuma
Application No.: 09/889,263
Filing Date: October 16, 2001
Title: MICROORGANISMS OF NOVEL SPECIES AND METHODS FOR USING
THE SAME

Art Unit: 1651

Examiner: Irene Mar

TECH CENTER 1600/2300

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

RESPONSE TO RESTRICTION REQUIREMENT

Sir:

In response to the Requirement for Restriction mailed August 7, 2003 (Paper No. 6), Applicant elects, with traverse, Group IX, consisting of claims 12 and 16, drawn to a food/feed additive composition comprising *Bacillus*.

As set forth in MPEP Chapter 800, a proper restriction requirement is made where the inventions are independent (MPEP § 802.01, § 806.04, § 808.01) or distinct as claimed (MPEP § 806.05 - § 806.05(i)); and there is a serious burden on the Examiner (see MPEP § 803.02, § 806.04(a) - § 806.04(i), § 808.01(a), and § 808.02). Additionally, MPEP § 803 states that "[i]f the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions." It is respectfully submitted that the Groups of the present Restriction Requirement are not independent or distinct invention and that a search of all the claims of the invention would not be a serious burden on the Examiner.

CERTIFICATION UNDER 37 CFR §1.8

I hereby certify that the documents referred to as enclosed herein are being deposited with the United States Postal Service as first class mail on September 8, 2003, in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Karen LePari

Karen LePari

In re Application of:
Takemi Aonuma
Application No.: 09/889,263
Filed: October 16, 2001
Page 2

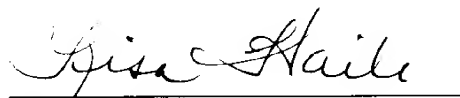
PATENT
Attorney Docket No.: HIRA1180

All of the claims, regardless of the method, include use of a microorganism of claim 1. Despite the Examiner's assertion that the different methods might involve different levels of purity or other ingredients, etc., it remains that the microorganism of claim 1 is common throughout the claims. Accordingly, the Groups are not independent or distinct inventions. However, even if the Groups are regarded as independent or distinct inventions, a search of the microorganism of claim 1, which would include methods utilizing the microorganism would not place a serious burden on the Examiner. Accordingly, it is respectfully requested that Groups I-XIII be rejoined for examination.

If the Examiner would like to discuss any of the issues raised in the Response, Applicants' representative can be reached at (858) 677-1456. Please charge any additional fees, or make any credits, to Deposit Account No. 50-1355.

Respectfully submitted,

Date: September 8, 2003



Lisa A Haile, Ph.D.
Reg. No. 38,347
Telephone: (858) 677-1456
Facsimile: (858) 677-1465

GRAY CARY WARE & FREIDENRICH LLP
4365 Executive Drive, Suite 1100
San Diego, California 92121-2133
USPTO Customer Number 28213